

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 03-0502****Withholding Tax
For Tax Years 1998-01**

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ISSUE**I. Withholding Tax—Responsible Officer Liability**

Authority: Indiana Department of Revenue v. Safayan, 654 N.E.2d 270 (Ind. 1995); IC 6-3-4-8; IC 6-8.1-5-1

Taxpayer protests his classification as a responsible officer of a corporation.

STATEMENT OF FACTS

Taxpayer was listed as an officer for a corporation which failed to remit withholding taxes. After the corporation did not pay its liabilities, The Department of Revenue ("Department") shifted the responsibility for the liabilities to the officers of the corporation. Taxpayer states that he learned of the liabilities while applying for a residential mortgage. Taxpayer protests his classification as a responsible officer for the corporation. Further facts will be supplied as required.

I. Withholding Tax—Responsible Officer Liability**DISCUSSION**

Taxpayer protests his classification as a responsible officer for the corporation in question. The withholding liabilities were personally assessed against taxpayer pursuant to IC 6-3-4-8(f), which provides that, "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties and interest." Also, under Indiana Department of Revenue v. Safayan, 654 N.E.2d 270 (Ind. 1995), "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid. The factors considered to determine whether a person has such authority are the following:

1. The person's position within the power structure of the Corporation.
2. The authority of the officer as established by the Articles of Incorporation, By-laws or employment contract; and
3. Whether the person actually exercised control over the finances of the business including control of the bank account, signing checks and tax returns or determining when and in what order to pay creditors.

Id., at 273.

In the course of this protest, taxpayer has provided sufficient documentation to determine that he did not have a position within the power structure of the corporation. He had no authority under an employment contract since he was not employed by the corporation. Finally, he exercised no control over the finances of the business. Control of the bank account, signing checks and tax returns and determining when and in what order to pay creditors were the sole responsibilities of another individual.

Under IC 6-8.1-5-1(b), assessments issued by the Department of Revenue are prima facie evidence that the taxes are owed, and the burden of proving them wrong rests with the taxpayer. Taxpayer has provided sufficient documentation to prove the assessments wrong. Therefore, taxpayer has met his burden under IC 6-8.1-5(b).

FINDING

Taxpayer's protest is sustained.

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